2383.

# SUPREME COURT OF THE UNITED STATES.

## No. 105.

JOHN LUTZ, PLAINTIFF IN ERROR,

VERSUS

OTHO M. LINTHICUM.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE COUNTY OF WASHINGTON.

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Style of Court. DISTRICT OF COLUMBIA, *sct.*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States of America the fifty-seventh,

Were present,

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, and } *Asst. Judges.*
JAMES S. MORSELL, }

HENRY ASHTON, Esq., *Marshal.*
WILLIAM BRENT, *Clerk.*

In the records of proceedings of the same court, amongst others are the following, to wit:

Parties. OTHO M. LINTHICUM
*vs.*
JOHN LUTZ.

Be it remembered, that heretofore, to wit, on the fourth day of May, in the year of our Lord one thousand eight hundred and thirty-two, the said Otho M. Linthicum, by John Marbury, esquire, his attorney, prosecuted and sued forth out of the Circuit Court here, the United States writ of *capias ad respondendum* against the said John Lutz, directed to the marshal of the District of Columbia, in the words, and of the tenor following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

Writ of capias ad respondendum. *The United States of America, to the Marshal of the District of Columbia, greeting:*

We command you that you take John Lutz, late of Washington county, if he shall be found within the county of Washington, in your said District, and him safely keep, so that you have his body before the Circuit Court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the first Monday of May inst., to answer unto Otho M. Linthicum, in a plea wherefore he broke the covenant made and entered into between them, according to force, form, and effect thereof, &c.

Hereof fail not at your peril, and have then and there this writ.

Witness, W. Cranch, esquire, Chief Judge of our said court, at the city of Washington, the 5th day of April, Anno Domini one thousand eight hundred and thirty-two.

Issued the 4th day of May, 1832.

MARBURY. WM. BRENT, *Clerk.*

And on the said first Monday of May, in the year eighteen hundred and thirty-two, being the day of the return of the said writ, comes into the Circuit Court here the said Otho M. Linthicum, by his attorney aforesaid; and the marshal to whom the said aforegoing writ was in form aforesaid direct-

ed, makes return thereof to the court here thus endorsed, to wit: "Cepi" Henry Ashton, marshal; and the said John Lutz being called, appears in court here by Francis S. Key, esquire, his attorney. And thereupon, the said John Lutz, by his said attorney, prays that the said Otho M. Linthicum may declare against him, the said John, in the plea aforesaid; whereupon it is ruled by the court here, that the said Otho declare against the said John in the plea aforesaid; and if the *the* said Otho doth not declare against the said John in the plea aforesaid, judgment will be rendered against him by default; and the said Otho, by his said attorney, prays leave of the court here to imparle until the fourth Monday of November next, to declare against the said John in the plea aforesaid, and he hath it; the same day is given to the said John, then, &c.

Marshal's return.

Rule nar.

Imparlance.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, until which day the said Otho had leave to imparle, and then to declare against the said John in the plea aforesaid, comes as well the said Otho M. Linthicum as the said John Lutz, by their attorneys aforesaid; and the said Otho, by his said attorney, declares against the said John in the plea aforesaid, as follows; that is to say:

WASHINGTON COUNTY, *District of Columbia, to wit:*

Declaration.

John Lutz, late of the county aforesaid, was summoned to answer unto Otho M. Linthicum in a plea that he keep with him the covenant made between the said John and the said Otho, according to the force, form, and effect, of certain articles of agreement made between them; and whereupon the said Otho, by J. Marbury, his attorney, complains that whereas, by certain articles of agreement made and concluded on the twenty-second day of October, in the year eighteen hundred and twenty-eight, at the county aforesaid, by and between the said John Lutz of the one part, and the said Otho M. Linthicum of the other part, which said articles of agreement, sealed with the seal of the said John Lutz, bearing date on the day and year aforesaid, the said Otho now brings here into court, reciting that the said John Lutz has rented or leased to the said Otho M. Linthicum all that brick house, with the appurtenances thereto belonging, situated on the corner of High and Bridge streets, in Georgetown, in the District of Columbia, with the alley thereto attached, of thirteen feet six inches, fronting on Bridge street, and running parallel with the said house, then in the possession and occupied by Jacob Carter, jr. as a dry goods store, to have and to hold said house, and recover peaceable possession on the third day of May next ensuing, and continue for the space of five years from said time, which will terminate on the third day of May, in the year 1834; the said Linthicum, on his part, did covenant and agree for himself, his heirs and assigns, to pay to the said John Lutz, agent as aforesaid, or his successor, the just and full sum of two hundred and fifty dollars for each and every year, for the aforesaid term of five years, the rent to be paid half yearly; and all repairs that may be done by the said Otho for his convenience, to be at his own expense, and any repairs done by him to be left on the premises as relates to the said house, as by the said articles of agreement more fully appears.

And the said Otho, in fact says the said John Lutz, in and by the said articles of agreement, bound himself to the said Otho that he, the said Otho, should have the peaceable possession of the said premises and the appurte-

nances, and retain and keep the same for the space of five years from the date aforesaid, as appears by the said articles, by virtue of which said articles the said Otho, on the day and year last aforesaid, and at the county aforesaid, entered into all and singular the said premises thereby demised, with the appurtenances, and became and was possessed thereof, and held the same under and by virtue of the said articles, from the date aforesaid until the third day of November, in the year 1832; that afterwards, and during the continuance of the said term of years in the said articles mentioned, and before the end and expiration thereof, to wit, on the day and year aforesaid, at the county aforesaid, the said John Lutz, without the consent and against the will of the said Otho, evicted and dispossessed the said Otho of and from the said premises, with the appurtenances mentioned in the said articles, and deprived him of the use and enjoyment of the same from thence and for the residue of the said term in the said articles mentioned, then yet to run and unexpired, contrary to the tenor and effect, true intent and meaning of the said articles of agreement, and of the said covenant of him the said John Lutz, so by him made in that behalf as aforesaid, whereby and by means thereof the said Otho lost the use of the said premises, and the appurtenance, and the benefit of the repairs expended thereon for his use and accommodation during the said term, and all the profit, benefit, and advantages that might and would have arisen and accrued to him from the use and occupation of the said premises and the appurtenances for all that time; so that the said Otho, in fact, saith that the said John Lutz, although often requested so to do, hath not kept the covenant so by him made as aforesaid, but hath broke the same, and to keep the same with the said Otho hath hitherto wholly refused, and still doth refuse; wherefore the said Otho says he is injured, and hath sustained damage to the value of two thousand dollars: therefore he brings suit.

JOHN MARBURY.
*For the Plaintiff.*

And the said Otho, at the time of declaring as above, filed in court here the following articles of agreement, and notice to quit the premises, to wit:

Articles of agreement.

Articles of agreement made and concluded this 22d day of October, in the year of our Lord one thousand eight hundred and twenty-eight, by and between John Lutz, of Georgetown, in the District of Columbia, and agent for John McPherson, of Fredericktown, in the State of Maryland, of the one part, and Otho M. Linthicum, of Georgetown and District aforesaid, of the other part, witnesseth, that the said John Lutz, agent as aforesaid, has rented or leased to the said O. M. Linthicum all that brick house, with the appurtenances thereto belonging, situated on the corner of High and Bridge streets, in Georgetown aforesaid, with the alley thereto attached, of thirteen feet six inches, fronting on Bridge street, and running parallel with said house, now in possession and occupied by Jacob Carter, jr., as a dry goods store, to have and to hold said house, and receive peaceable possession on the third day of May next ensuing, and continue for the space of five years from said time, which will terminate on the third day of May, 1834. And the said O. M. Linthicum, on his part, doth hereby covenant and agree for himself, his heirs and assigns, to pay to the said John Lutz, agent as aforesaid, or his successor, the just and full sum of two hundred and fifty dollars for each and every year for the aforesaid term of five years, the rent to be paid half yearly,

as the same may become due; and all repairs that may be done by the said O. M. Linthicum for his own convenience, to be at his own expense, and any repairs done by him to be left on the premises, as relates to the house; but in case he should erect a warehouse on the vacant ground, shall have the privilege to remove the same at his will and pleasure, within said time, and to leave the house in as good condition at the end of said term as when he gets possession, the usual ware and tare excepted.

In witness whereof, we, the said John Lutz and O. M. Linthicum, have hereunto interchangeably set our hands and seals, day and date above.

Signed, sealed, and delivered, in presence of
JAMES GETTYS.
JOHN WHITE.

JNO. LUTZ, [SEAL.]
*Agent for J. McPherson.*
O. M. LINTHICUM. [SEAL.]

GEORGETOWN, *Nov.* 3, 1831.

Notice to quit.

SIR: You are hereby notified that the term or period for which you hold the house, lot, and premises at the corner of Bridge and High streets, will expire on the third day of May, 1832, and that your possession thereof will cease on that day; and that you are required to deliver over the same to Dr. William Gunton, his heirs or assigns, at that time.

JNO. LUTZ,
*Agent for the heirs and representative of Sarah McPherson.*

TO DR. OTHO M. LINTHICUM,
*Georgetown, D. C.*

Rule plea.

And thereupon, the said Otho, by his attorney aforesaid, prays that the said John may answer to the declaration of him, the said Otho, in the plea aforesaid, whereupon it is ruled by the court here that the said John answer to the declaration of the said Otho in the plea aforesaid; and if the said John doth not answer to the declaration of the said Otho in the plea aforesaid, judgment will be rendered against him by default; and the said John, by his said attorney, defends the force and injury when and so forth, and says that the said Otho has action aforesaid, thereof against him to have or maintain, not because he saith that he hath well and truly fulfilled, and kept and performed all and every the covenants in the said agreement contained, on his part to be fulfilled, kept and performed; and of this he puts himself upon the country, and the said Otho in like manner, and so forth: Thereupon the parties aforesaid, by their attorneys aforesaid, move the court here that the whole matters in the premises between them in variance, may be referred according to the law in such case made and provided, and the approved custom of the court here, to persons indifferently appointed to adjust the same, and filed here the following agreement, to wit:

OTHO M. LINTHICUM,
*vs.*
JOHN LUTZ.

Imparlance, Nov. t., 1832.
No. 497.

Agreement to refer.

Mr. Brent: enter this case referred to William S. Nicholls and Francis Dodge, with liberty to choose a third; the arbitrament of a majority in the premises to be final between the parties.

JOHN MARBURY, *for the Pltff.*
F. S. KEY, *for Deft.*

W. S. Nicholls and Francis Dodge appointed referees.

Whereupon, it is ruled by the court here, that the said William S. Nicholls and Francis Dodge, gentlemen, be appointed referees between the parties aforesaid, with liberty to choose a third person; and that they, or any two of them, when the whole matter concerning the premises between the parties aforesaid in variance, being fairly adjusted, have their award in writing under their hands, and return the same to the court here, and judgment of the court to be rendered according to such award, and be final between the said parties; and afterwards, to wit, on the 28th day of January, eighteen hundred and thirty-three, the said William S. Nichols and Francis Dodge file in court here the following certificate, appointing John Kurtz, with themselves, the referees in the premises, to wit:

Certificate appointing John Kurtz a referee.

We certify that, pursuant to the terms of reference in the case of Otho M. Linthicum vs. John Lutz, and before proceeding to act therein, or make any award, we, the referees, did nominate and appoint John Kurtz, whose name is subscribed to the within award, the third referee to act, together with ourselves, in deciding the controversy between the parties, and submitted to us.

W. S. NICHOLLS.
FRA. DODGE.

And on the same day, the referees file in court here their award in manner and form following, to wit:

Award of the referees.

We, the subscribers, appointed arbitrators to settle a dispute between Otho M. Linthicum and John Lutz, in which the executors of the late John McPherson, of Frederick, are interested, do award the sum of eleven hundred and twenty-nine dollars $\frac{93}{100}$ to be paid to the said Linthicum, in full for all expenses and damages sustained by him, in consequence of not leaving him in quiet possession of the house at the corner of Bridge and High streets, Georgetown, for the full term of the lease for five years—any arrear of rent due from Linthicum to be paid by him.

W. S. NICHOLLS.
J. KURTZ.
FRA. DODGE.

*Georgetown, 18th January, 1833.*

Continuance.

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, is continued until the fourth Monday of March next.

March term, 1833.

And now, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-three, come into the Circuit Court here as well the said Otho M. Linthicum as the said John Lutz, by their attorneys aforesaid. And

Motion for judgment.

thereupon the said Otho, by his attorney aforesaid, prays the court here to enter judgment on the award aforesaid: whereupon, all and singular the premises being seen, heard, and read, and after argument of counsel, and mature deliberation being thereon had, it is

Judgment entered.

considered by the court here that the said Otho M. Linthicum recover against the said John Lutz as well the sum of

Amount of judgment.

one thousand one hundred and twenty-nine dollars and ninety-three cents, the damages by the arbitrators aforesaid, in

form aforesaid awarded, as the sum of twelve dollars and forty-four cents for his costs and charges by him about his suit in this behalf expended unto the said Otho by the court here, with his assent adjudged; and the sain John in mercy, &c. Costs.

Teste: WM. BRENT, *Clerk.*

Whereas, afterwards, to wit, on the 29th day of May, in the year of our Lord one thousand eight hundred and thirty-three, the said John Lutz, by his attorney aforesaid, produced and filed in court here the United States' writ for the correcting of errors, of and upon the judgment aforesaid, directed to the Judges of the Circuit Court of the District of Columbia in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name, [SEAL.] and affixed the public seal of the said court, this third day of June, 1833.

WM. BRENT, *Clerk.*

Know all men by these presents, that we, John Lutz and Francis S. Key, of Washington, of Washington county, are held and firmly bound unto Otho M. Linthicum in the full and just sum of two thousand two hundred dollars, current money, to be paid to the said Otho M. Linthicum, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this 28th day of May, eighteen hundred and thirty-three. Appeal bond.

Whereas, lately, at a Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, in a suit depending in the said Circuit Court, which the said Otho M. Linthicum was plaintiff, and the said John Lutz was defendant, judgment was rendered against the said John Lutz; and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation to the said Otho M. Linthicum directed, citing and admonishing him to be and appear at a Supreme Court on the Monday of August next.

Now, the condition of the above obligation is such, that if the said John Lutz shall prosecute said writ to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Signed, sealed, and delivered, in presence of JOSEPH CONNER.

JOHN LUTZ. [SEAL.]

F. S. KEY. [SEAL.]

Approved by order of the court.

WM. BRENT, *Clerk.*